

PART 335—RESEARCH AND DEVELOPMENT CONTRACTING

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

335.070 Cost-sharing.

335.070–1 Policy.

(a) Contracting activities shall encourage performing organizations to contribute to the cost of performing R & D, through the use of cost-sharing contracts, where there is a probability that the contractor will receive present or future benefits from participation, such as increased technical know-how, training for employees, acquisition of equipment, and use of background knowledge in future contracts. Cost-sharing is intended to serve the mutual interests of the Government and the performing organization by helping to ensure efficient utilization of the resources available for the conduct of R & D projects and by promoting sound planning and prudent fiscal policies of the performing organization. The Contracting Officer shall use a cost-sharing contract, unless the Contracting Officer determines that a request for cost-sharing would not be appropriate because of the following circumstances:

(1) The particular R & D objective or scope of effort for the project is specified by the Government rather than proposed by the performing organization. This would usually include any formal Government solicitation for a specific project.

(2) The R & D effort has only minor relevance to the non-Federal activities of the performing organization, and the organization is proposing to undertake the R & D primarily as a service to the Government.

(3) The organization has little or no non-Federal sources or funds from

which to make a cost contribution. Organizations which are predominantly engaged in R & D and have little or no production or other service activities may not be in a favorable position to make a cost contribution. Accordingly, the Contracting Officer shall normally not request cost-sharing, if cost-sharing would require the Government to provide funds through some other means (such as fees) to enable the organization to cost-share.

(b) The Contracting Officer has the responsibility for negotiating cost-sharing. Each R & D contract file shall indicate whether the Contracting Officer considered cost-sharing appropriate for that particular contract and in what amount. If cost sharing was not appropriate, the file must include a statement and factual basis for that decision (e.g., “Because the contractor will derive no benefits from this award that can be applied to its commercial activities, cost-sharing is not considered appropriate.”) The Contracting Officer shall coordinate with the Project Officer before documenting this decision.

(c) If the Contracting Officer considers cost-sharing appropriate for an R & D contract and the contractor refuses to accept this type of contract, the Contracting Officer may make an award without cost-sharing, if the Contracting Officer concludes that payment of the full cost of the R & D effort is necessary to obtain the services of that particular contractor.

335.070–2 Amount of cost sharing.

When cost-sharing is appropriate, the Contracting Officer shall use the following guidelines to determine the amount of cost participation by the contractor:

(a) The amount of cost participation depends on the extent to which the R & D effort or results are likely to enhance the performing organization's capability, expertise, or competitive position, and the value of this enhancement to the performing organization. Therefore, contractor cost participation could reasonably range from as little as one percent or less of the total project cost to more than 50 percent of the total project cost. Ultimately, cost-sharing is a negotiable item. As

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such, the amount of cost-sharing shall be proportional to the anticipated value of the contractor's gain.

(b) If the performing organization will not acquire title to, or the right to use, inventions, patents, or technical information resulting from the R & D project, it is normally appropriate to obtain less cost-sharing than in cases in which the performer acquires these rights.

(c) A fee or profit is not normally paid to the performing organization, if the organization is to contribute to the cost of the R & D effort, but the amount of cost-sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the R & D is expected to be of only minor value to the performing organization, and if a statute does not require cost-sharing, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing costs of the project.

(d) The organization's participation may be considered over the total term of the project, so that a relatively high contribution in one year may be offset by a relatively low contribution in another.

(e) A relatively low degree of cost-sharing may be appropriate, if an area of R & D requires special stimulus in the national interest.

335.070-3 Method of cost sharing.

Cost-sharing on individual contracts may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed or by a fixed amount or stated percentage of the total allowable costs of the project. Contractors shall not charge costs contributed to the Government under any other instrument (e.g., grant or contract), including allocations to other instruments as part of any independent R & D program.

335.070-4 Contract award.

Consistent with HHS' objectives of competition and support of the small business program, Contracting Officers shall not award contracts solely on the basis of an organization's ability or willingness to cost-share. Contracting

Officers shall make awards primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations, whenever possible. An offeror's willingness to share costs is not a technical evaluation consideration, but a business consideration, which is secondary to selecting the best qualified source.

335.071 Special determinations and findings affecting research and development contracting.

OPDIV heads shall sign individual and class D & Fs for—

(a) Acquisition or construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(a)(7); and

(b) Use of an indemnification provision in an R & D contract pursuant to 42 U.S.C. 241(a)(7).

PART 337—SERVICE CONTRACTING—GENERAL

Subpart 337.1—Service Contracts—General

Sec.

337.103-70 Solicitation provisions and contract clauses.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 337.1—Service Contracts—General

337.103-70 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the clause in 352.237-70, Pro-Children Act, in solicitations, contracts, and orders that involve (a) kindergarten, elementary, or secondary education or library services or (b) health or daycare services that are provided to children under the age of 18 on a routine or regular basis pursuant to the Pro-Children Act of 1994.

(b) The Contracting Officer shall insert the clause in 352.237-71, Crime Control Act—Reporting of Child Abuse, in solicitations, contracts, and orders that require performance on Federal